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10/706,318

11/12/2003

Michael Cafaro

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07/20/2006

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EXAMINER

RALIS, STEPHEN J

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/706,318

Applicant(s)

CAFARO, MICHAEL

Examiner

Stephen J. Ralis

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 4,8-12,15,16 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,13,14,17-22 and 24-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/10/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 1-3, 5-7, 13, 14, 17-22 and 24-39 in the reply filed on 24 April 2006 is acknowledged.
2. Claims 4, 8-12, 15, 16 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 24 April 2006.
3. Claim 9 is further withdrawn from consideration based on its dependency from non-elected species of claim 8.

### *Drawings*

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hair styling apparatus being a curling iron, a styling iron, a flat iron, a crimping iron, a spiral iron, and a hair-setting tool; the programmable electronic control and its inclusion of memory and a battery; the input mechanism comprising a touch pad; and the locking mode/additional operational mode display on the LCD must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

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replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 20-22 and 24-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20 and 34 recites the limitation "the output temperature" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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Claims 21, 22, 24-33 and 35-39 are dependent claims of claims 20 and 34 and are rejected based on their dependency, accordingly.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 5, 6, 13, 14, 18-22, 24, 25, 27, 28, 30-35 and 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Ruben (U.S. Publication No. 2005/0011533).

Ruben discloses an appliance for styling hair comprising: a handle (handle 20; page 1, paragraphs 15; page 2, paragraphs 18,20) and a styling portion (body 30; page 1, paragraphs 15-17); a programmable electronic control for electronically controlling at least one operational feature of the appliance (page 2, paragraphs 21-23; page 3, paragraphs 31, 33; see Table I and Figure 9); a control panel having at least one input mechanism to set the at least one operational feature of the appliance (page 2, paragraphs 24-25; see Figures 1, 2, 4, 5, 8); and an liquid crystal display (LCD) screen to indicate the operational status of the at least one operational feature of the appliance, wherein the display screen is located on the handle portion of the appliance (Abstract;

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page 2, paragraphs 21, 27; page 3, paragraphs 28-29; page 4, paragraph 38, claims 1-5).

Ruben further discloses styling iron, a curling iron, a flat iron; a crimping iron; and a hair setting tool (all hair irons are inherently styling irons; curling iron [page 4, claim 7] a flat iron [hair straightener; page 4, claim 7]; a crimping iron [hair crimper; page 4, claim 7]; and a hair-setting tool [hot curlers; page 4, claim 7]); the input mechanism comprising a touch pad and the at least one operational feature comprising a temperature setting (buttons 60 on user interface pad; page 2, paragraph 25-26; see Figure 1); the display screen is a light emitting diode (LED) (page 1, paragraph 1; page 3, paragraph 32-33); the programmable logic control circuit comprising memory (a programmable controller that can be programmed to correlate power settings to temperature, either pre-set by factory or by user, inherently has memory to store said values; (page 2, paragraphs 21-23; page 3, paragraphs 31, 33; see Table I and Figure 9); at least one operational feature of the appliance in addition to temperature and the display screen indicates the status of the at least one additional feature of the appliance (page 4, claims 1-5).

With respect to the limitations of claim 38, the instant invention claims multiple embodiments within the claims (i.e. at least one additional operational parameter is a sleep mode, a last setting mode, or a locking mode) and the Examiners burden is to find one of the embodiments (e.g. sleep mode). Ruben further discloses an additional operational parameter being a sleep mode (page 2-3, paragraphs 27-28).

As the reference meets all material limitations of the claims at hand, the reference is anticipatory.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 7 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruben (U.S. Publication No. 2005/0011533) in view of Takimae (U.S. Patent No. 4,464,562).

The claims differ from Ruben in calling for the hair styling apparatus being a spiral iron. However, hair styling apparatus being a spiral iron, as described by Takimae, is well known in the art. Takimae teaches a curling iron comprising a rod having a plurality of side by side spiral polygonal edges to reduce the potential of hair damage by excessive heat and pressure (Abstract; see Figures 1, 3), thereby improving

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the operational characteristics of the device. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the rod of Ruben device with the spiral rod configuration of Takimae to reduce the potential of hair damage by excessive heat and pressure, thereby improving the operational characteristics of the device.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruben (U.S. Publication No. 2005/0011533) in view of Dreher (International Publication No. WO 02/087833).

The claims differ from Ruben in calling for the at least one operational feature comprising a locking mode. However, a heatable appliance for styling hair comprising a locking mode, as described by Dreher, is well known in the art. Dreher teaches a control device (1) comprising a locking mode (selector switch and the power circuit device are integrated in a single device [power circuit device 3] displaying one input, several outputs and a locked position; included English translation, page 7, lines 8-17) to provide a mechanism that does not unintentionally heating when the device is powered up and not in use (included English translation; page 10, line 22 – page 11, line 2), thereby increasing the operational safety of the device. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the at least one operational feature of Ruben with the inclusion of the locking mode of Dreher to provide a mechanism that does not unintentionally heating when the device is powered up and not in use, thereby increasing the operational safety of the device.

13. Claim 29 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruben (U.S. Publication No. 2005/0011533) in view of Kurisaki (U.S. Patent No. 5,898,956).

The claims differ from Ruben in calling for the programmable logic control comprising a battery. However, electronic logic controllers in the heating art comprising a battery, as described by Kurisaki et al., is well known in the art. Kurisaki et al. teach a seat heater (53) being controlled by an electronic controller (100) comprising an internal battery to provide the backup RAM (random access memory) power for data to not be erased even if a power supply is shut off (column 17, lines 15-40), thereby increasing the operational functionality of the device. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the programmable logic electronic control of Ruben with the addition of an internal battery of Kurisaki et al. to provide the backup RAM (random access memory) power for data to not be erased even if a power supply is shut off, thereby increasing the operational functionality of the device.

#### ***Prior Art***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

International Publication No. WO 03/056971 to Ruben is another teaching of an appliance for styling hair with respect to the limitations of the instant invention.

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U.S. Patent No. 6,953,916 to Dreher is the US equivalent case of WO 02/087833.

U.S. Publication No. 2001/0013513; 2003/0052115; U.S. Patent No. 4,032,747; 4,673,798; 4,841,127; 5,160,831; 5,354,967; 5,749,379; 5,785,064; 5,983,783; 6,065,391; 6,497,043 and Great Britain Patent No. 2191320A are cumulative to or less pertinent than the references relied upon above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Ralis whose telephone number is 571-272-6227. The examiner can normally be reached on Monday - Friday, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

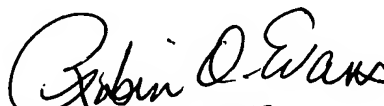
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen J Ralis  
Examiner  
Art Unit 3742

SJR  
July 6, 2006



ROBIN O. EVANS  
PRIMARY EXAMINER  
7/7/06